

Alan Jay Schwartz, M.D., M.S.Ed., Editor

The Final Hurdle: A Physician's Guide to Negotiating a Fair Employment Agreement.

Dennis Hursh, Esq. Charleston, SC, Advantage Media Group, 2012. Pages: 116. Price: \$69.97.

The Final Hurdle: A Physician's Guide to Negotiating a Fair Employment Agreement may seem to some experienced ANESTHESIOLOGY readers an unusual choice for this issue's book review. However, the book provides sound and practical advice to any physician who is considering a job search or change. Although primarily directed toward young physicians at the start of their careers, the concepts discussed by the author can be applied during an employment negotiation at any stage of one's career. The subject matter is not specific to the practice of anesthesiology but rather is general enough to be relevant to physicians in most specialties. That said, the author does include specific focus on the risks of production-based compensation models, which can have unique implications for anesthesiologists.

Mr. Hursh's book is a quick and easy read: it is a small investment of time for the reader with the potential for significant payoff of avoiding costly errors in accepting a disadvantageous employment contract. The content is comprehensive and pithy yet written in understandable language to make it accessible to the layperson. This is no dry, dense legal text. His casual, even humorous, style occasionally borders on sarcasm, which could become offensive to some readers, but he successfully gets across his points. He immediately engages the reader with a description of the natural feelings of flattery that can accompany one's first job offer. After years of training with long hours at low wages, many physicians are too easily tempted by the joy of a "real job" and neglect to do the appropriate homework to determine the fairness of an employment offer. Mr. Hursh provides a checklist of the most important contract elements of which physicians should be aware: compensation, restrictive covenants, work expectations, benefits and malpractice, termination clauses, and (where applicable) private practice partnership models.

Many physicians, particularly those with less experience, are reluctant to question the proposed terms of an employment offer for fear of appearing demanding or offending their prospective employer. The primary lesson that readers should take away from this book is the importance of establishing clear expectations for both parties before the employment relationship begins. You will never have more leverage to understand or change the terms of the agreement than you have before you sign it. The employer's willingness to negotiate certain terms may vary with the size of the practice, but if anything appears vague or concerning, it is best to clarify it up front to avoid conflict or bad feelings after the fact.

Compensation is obviously one of the most critical components of any employment offer. However, without

an understanding of the methodology or the work effort required to earn the quoted figure, the number itself is meaningless. Whether compensation is productivity-based or salaried with incentive, it is important to understand the expectations of work hours and on-call coverage, the formula for determining variable pay, and how clinical assignments are made to evaluate whether it is a fair offer. This information also will help physicians determine how the proposed position fits with their personal vision of work-life integration. Productivity-based compensation can take a number of forms, from relative value unit formulas to pure percentage of collections, some of which are outside of the physician's control. Mr. Hursh cautions against a pure productivity-based compensation in the first few years of employment, as a new physician is establishing a reputation. For anesthesiologists, productivity-based compensation additionally can be problematic if clinical assignments are not distributed equitably, as certain assignments are by nature more lucrative than others. Other components of compensation that should be understood clearly (although rarely negotiable) include benefits such as health and disability insurance, retirement, paid time off, certain professional expenses, or possible relocation expense. It is important to understand whether any portion of the costs for these benefits is deducted from the quoted compensation, as well as related taxability considerations.

Two legal concepts that physicians should be aware of are contract termination clauses and restrictive covenants, also known as "noncompetes." Mr. Hursh describes the underlying justification for noncompete clauses and alerts the reader to ensure reasonableness in both geographic radius and duration. Physicians should be cautious of any restrictive covenants in which either of these provisions appears excessive and would prevent them from earning a living in the area if employment ends for any reason. This brings us to termination clauses; Mr. Hursh explains the difference between for-cause and without-cause termination by either party and the importance of reasonableness and parity among the reasons for each. It is reasonable for a physician to expect some consideration if the employer terminates employment without cause, that is, for a reason unrelated to the physician's performance, such as insufficient workload. In these cases, the contract should stipulate some reasonable amount of notice (e.g., at least 3 months) and a waiver of any restrictive covenant.

Malpractice coverage is an item that can have far-reaching impact on a physician's career; for this reason, it is a key term of any employment agreement. Mr. Hursh explains the difference between occurrence-based and claims-made insurance and the importance of understanding which party is responsible for purchasing "tail" coverage in the case of claims-made insurance.

Finally, for those who are pursuing employment in a private practice, the book addresses questions related to partnership and practice ownership. Mr. Hursh does a good job of

helping the reader to anticipate issues that may arise several years down the road and avoid painful future conflicts. He describes the various approaches to practice valuation—fixed dollar, fair market value, and book value—and the possible pitfalls of each. He walks the reader through sample calculations in each scenario and acknowledges that although no single approach is perfect, he favors the book value method. His main message here is that, whichever method is chosen, the buy-in and buy-out calculations should use a consistent formula.

In summary, negotiating an employment agreement is a high-stakes game that is neither easy nor comfortable. Balancing the need to protect your interests with preserving the future working relationship requires finesse, but it is important to stand up for what is reasonable. Physicians should remember that they have the ability to influence some, but not all, aspects

of the agreement, as the employer equally is interested in reaching a successful deal. Mr. Hursh of course recommends hiring a professional contract attorney, but his book provides good tips and tools for physicians to recognize and address the most important contract provisions even if pursuing negotiations on their own. He advises physicians to take their time, not to agree to anything too quickly, and if all else fails, call for help and blame it on the lawyer!

Judith Kraft, M.B.A., Department of Anesthesiology and Critical Care Medicine, Children's Hospital of Philadelphia, Philadelphia, Pennsylvania. kraft@email.chop.edu

(Accepted for publication May 2, 2017.)
